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Official Report of Debates (Hansard)

A-25

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Standing Committee on
Government Agencies

Intended appointments

Comité permanent des
organismes gouvernementaux

Nominations prévues

2nd Session
41st Parliament

Tuesday 26 September 2017

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41^e législature

Mardi 26 septembre 2017

Chair: Cristina Martins
Clerk: Sylwia Przezdziecki

Présidente : Cristina Martins
Greffière : Sylwia Przezdziecki



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIES

Tuesday 26 September 2017

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Mardi 26 septembre 2017

The committee met at 0901 in committee room 2.

SUBCOMMITTEE REPORT

The Chair (Mrs. Cristina Martins): Good morning, everyone, and welcome to the government agencies committee this morning. Before we begin our intended appointments review, our first order of business is to consider one subcommittee report, dated Thursday, September 14, 2017. Would someone please move adoption of the report? Mr. Gates.

Mr. Wayne Gates: Good morning. I move the adoption of the subcommittee report on intended appointments dated Thursday, September 14, 2017.

The Chair (Mrs. Cristina Martins): Any discussion? All in favour? Opposed? The motion is carried. Thank you very much.

INTENDED APPOINTMENTS

MR. JONATHAN BATTY

Review of intended appointment, selected by official opposition party: Jonathan Batty, intended appointee as member and associate chair, Licence Appeal Tribunal (Safety, Licensing Appeals and Standards Tribunals Ontario); member, Animal Care Review Board (Safety, Licensing Appeals and Standards Tribunals Ontario); member, Fire Safety Commission (Safety, Licensing Appeals and Standards Tribunals Ontario); member, Ontario Civilian Police Commission (Safety, Licensing Appeals and Standards Tribunals Ontario); and member, Ontario Parole Board (Safety, Licensing Appeals and Standards Tribunals Ontario).

The Chair (Mrs. Cristina Martins): We will now move on to our intended appointments. Our first—I believe there's only one intended appointment today—is Mr. Jonathan Batty, nominated as member and associate chair of the Licence Appeal Tribunal (Safety, Licensing Appeals and Standards Tribunals Ontario); member of the Animal Care Review Board (Safety, Licensing Appeals and Standards Tribunals Ontario); the Fire Safety Commission (Safety, Licensing Appeals and Standards Tribunals Ontario); the Ontario Civilian Police Commission (Safety, Licensing Appeals and Standards Tribunals Ontario); and the Ontario Parole Board (Safety, Licensing Appeals and Standards Tribunals Ontario).

Please come forward, Mr. Batty. You may take a seat at the table. Welcome, and thank you very much for being here this morning. You may begin with a brief statement, if you wish. Members of each party will then have 10 minutes to ask you questions. Any time used for your statement will be deducted from the government's time for questioning, and when that time comes around, it will be the government that will begin with questioning.

You may begin.

Mr. Jonathan Batty: Good morning, Chair and members of the committee. My name is Jonathan Batty. Thank you for this opportunity to explain to you my interest and my professional qualifications for appointment as a member and associate chair of LAT, the Licence Appeal Tribunal. LAT is one of the five constituent tribunals of SLASTO, the Safety, Licensing Appeals and Standards Tribunals Ontario. The four other tribunals under SLASTO's umbrella are, as you know, the Animal Care Review Board, the Fire Safety Commission, the Ontario Civilian Police Commission and the Ontario Parole Board.

I am honoured to be considered for the appointment as associate chair and member of LAT, and as a member of these four related tribunals. Such cross-appointments are usual. They facilitate consistency and efficiencies in the work of SLASTO, as was envisioned by the Adjudicative Tribunals Accountability, Governance and Appointments Act when it was enacted in 2009.

SLASTO and LAT serve the public by adjudicating issues that make a real difference in the lives of people. I would like to contribute to this important public service. I think public service is a vocation. It has been the primary focus of my professional career. I have practised law for over 20 years. I am familiar with the procedural rules for federal and provincial courts and tribunals. I have also worked inside and outside government. I know I can be an impartial adjudicator.

My legal practice has focused on public and administrative law. This branch of the law focuses on administrative decision-making and how it is reviewed by courts and tribunals. Its foundational concept is that people have the right to expect three things from a tribunal: the right to have a fair opportunity to be heard and obtain a remedy; the right to have the law applied correctly and reasonably; the right to receive a timely decision which is fair, clear and complete.

While I have not served on this tribunal, I know from my years of practice and my training as an adjudicator that I can offer this to the people who appear before me.

This role also requires someone to be more than just an adjudicator. An associate chair of SLASTO must be able to support the executive chair in providing strategic and operational leadership to the SLASTO tribunals. I have that experience. In coming to the tribunal, I think I can contribute a perspective that will assist SLASTO.

For the last decade, I have been a director and the general counsel at Elections Ontario. I know that as members of the Legislative Assembly, you will be very familiar with Elections Ontario. One of that agency's major objectives has been to modernize electoral administration and focus on how to best serve electors and those involved in the electoral process. To meet this goal, one of the things that I have accomplished has been the updating of materials and training provided to chief financial officers for candidates, parties and constituency associations.

The guiding principle of electoral agencies is that elections need to be administered in a way that is fair, accessible and impartial. I believe tribunals have to manage their work following the same principle. I think my experience can translate into this new role. I will be particularly interested in helping to ensure the tribunal is representative of Ontarians and serves the public, especially those people who are self-represented, in a way that is fair, accessible and impartial.

Thank you for your time this morning. I welcome any questions you may have.

The Chair (Mrs. Cristina Martins): Thank you very much, Mr. Batty. We will now turn the questions over to Ms. Vernile.

Ms. Daiene Vernile: Mr. Batty, thank you very much for putting your name forward and wanting to serve. Can you point to some issues, some circumstances in the past—with all of your experience—that would help to inform you serving on this tribunal?

Mr. Jonathan Batty: I think one of the things that I can definitely bring to this tribunal, and particularly as an associate chair for SLASTO, is a familiarity with how to adapt to legislative change. I think it's fair to say that SLASTO, and in particular LAT, often sees legislative change in terms of reshaping its mandate or expanding its mandate and growing its responsibilities. That's certainly something I've been familiar with at Elections Ontario. As the director of compliance and general counsel, I've gone through, I think, three major rounds of legislative change in electoral matters, meaning that our mandate has been expanded. In a compliance framework, it has meant we've had to adopt new practices, new procedures, and certainly communicate how the law applies to stakeholders to facilitate their participation in the electoral process.

Ms. Daiene Vernile: Do any of these particular boards—the Animal Care Review Board, Fire Safety Commission, Ontario Civilian Police Commission or Ontario Parole Board—present any concerns for you at this time?

Mr. Jonathan Batty: No, they do not.

0910

Ms. Daiene Vernile: My understanding is that you're actually looking at taking a pay cut to do this. Is that correct?

Mr. Jonathan Batty: Yes, that's correct.

Ms. Daiene Vernile: Can you speak to that?

Mr. Jonathan Batty: I can speak to that. I am, by training, a lawyer, and there are certainly some very lucrative fields of law. Public and administrative law may not be the most lucrative, but it's one that I find truly compelling, because I really do believe public service is a vocation, and it has been the focus of my career. This tribunal and this role really provide me an opportunity to further my career, and further my service to the public and to this field of the law.

Ms. Daiene Vernile: Sitting in this position, is there anything in particular that you want to bring to the table? Do you have any goals that you wish to accomplish in this position?

Mr. Jonathan Batty: As I mentioned in my statement, one of the things that I have done, particularly in my past position, has been to look at the materials that have been provided to stakeholders which explain how they participate in the process, and to simplify them and make them plain-language. That may be something that's unusual to hear from a lawyer—converting something into plain language—but I really do believe that in any regulated activity, or before a tribunal, it's really important that the process be accessible and understandable to people. In order for something to be accessible and understandable, you have to be able to explain it in clear, direct language. That's something that I would say is a priority that I would bring to the board.

Ms. Daiene Vernile: Would you say that enough Ontarians know that they even have the option of going to a tribunal?

Mr. Jonathan Batty: It may not be widely known, but I think that any time someone encounters administrative decision-making and may be unhappy with that decision-making, they soon find out and they soon explore what their opportunities are for redress.

While you might not be able to ask the everyday person whom you meet on the sidewalk, "What's SLASTO?" or "What's LAT?", there are a tremendous number of Ontarians who do encounter the work of these tribunals in their everyday lives.

The Chair (Mrs. Cristina Martins): You have just under a minute.

Ms. Daiene Vernile: What do you think that we could be doing to give that information to the public, to let them know?

Mr. Jonathan Batty: I don't want to give an off-the-top-of-the-head answer about that. Certainly, in preparing for this role, I've been looking at the website and other public materials. I'm not familiar, at this point, with the outreach activities in particular. I think, before prescribing a remedy in that area, that I would really like to understand what there is already.

Ms. Daiene Vernile: I thank you very much for coming forward in your public service. Thank you.

Mr. Jonathan Batty: Thank you.

The Chair (Mrs. Cristina Martins): Thank you very much, Ms. Vernile.

We will now begin with the official opposition. Mr. Clark?

Mr. Steve Clark: Good morning, Mr. Batty. It's good to see you again. You've had a solid career. You've got lots of qualifications. I guess I just expect that someone reached out to you about this position?

Mr. Jonathan Batty: Is your question about how I applied for the position?

Mr. Steve Clark: You can answer that, yes.

Mr. Jonathan Batty: Yes, I can describe that fully. The position was advertised in Ontario Reports, which is a weekly publication for lawyers. That's where I learned of the position. How I applied for the position and put my name forward for the position was, I followed the instructions on that advertisement to submit my application to the Public Appointments Secretariat. I submitted that. I believe I emailed my application to the Public Appointments Secretariat. I think you got my application.

Mr. Steve Clark: I did.

Mr. Jonathan Batty: Then I was invited by the executive chair of the tribunal to attend two different interviews with her and with other tribunal members, other associate chairs. Following that process, I understand the executive chair put my name forward for the appointment.

Mr. Steve Clark: In terms of the question that Ms. Vernile asked, the discussion about the pay cut, are we to assume you're going to be leaving the position you currently hold at Elections Ontario and you're going to have no other position with that organization?

Mr. Jonathan Batty: That's right. If I'm appointed to the tribunal, I will be leaving the Office of the Chief Electoral Officer.

Mr. Steve Clark: You and I obviously have dealt with each other before. In your application, you mentioned that you were the author of the Sudbury by-election report that was tabled in the Legislature. Do you want to tell us a little bit about your role in that report?

Ms. Daiene Vernile: Point of order, Chair.

Mr. Steve Clark: I just want to say before the point of order that it is part of the application. Mr. Batty mentioned that we have the application and—

Ms. Daiene Vernile: It's outside the scope—

Mr. Steve Clark: It's number 7. It's number 7 of the document, part of his application.

Interjections.

Mr. Steve Clark: I'm not sure whether other members have read the application, but certainly I've read the application—

The Chair (Mrs. Cristina Martins): Ms. Vernile, on a point of order.

Ms. Daiene Vernile: Mr. Clark is asking a question that is beyond the scope and beyond the mandate of why we're here today, and that is to look at Mr. Batty's application for a tribunal. We're not here to talk about the issue you brought up.

The Chair (Mrs. Cristina Martins): We'll just continue the questioning, Mr. Clark. He's asking questions

that right now fall within the scope of this interview here this morning.

Mr. Jonathan Batty: I have been the head of regulatory compliance and primary legal counsel to the Chief Electoral Officer for the last decade. Under his direction, I have led Elections Ontario's regulatory activities. As you know, the Chief Electoral Officer reported to the Speaker about the agencies investigation in February 2015. I did author the Chief Electoral Officer's report that he tabled with the Speaker.

Mr. Steve Clark: I think you're being modest. Based on what I see, you serve as the media spokesperson for the agency and you've written many high-profile reports. I was on Bill 201, and when the Chief Electoral Officer couldn't attend, you very ably represented him at committee as the resource. Aren't you sort of downplaying what you've put in your application? This was really your report to the Legislature. You wrote it, and you were involved in the interview process.

Mr. Jonathan Batty: It is the Chief Electoral Officer's report. I take as a compliment having my responses framed as being modest, because I want to be careful and I don't want to overstate my involvement or appear immodest, which I think can sometimes happen before committee.

Mr. Steve Clark: But just to confirm, in item 7, your quote says, "I am in charge of determining how statutory rules apply...." That's a correct statement?

Mr. Jonathan Batty: Yes. There are lots of examples where I determine, in the course of my current work, where statutory rules apply; for example, with respect to the nature of contributions and expenditures in relation to elections and in relation to other activities.

As you know, we have undergone in Ontario some changes with respect to the rules with respect to political advertising. Our office, my office, my division and myself have been responsible for explaining how those rules operate and how they operate in a very practical sense for people. I do that on a regular basis, yes.

0920

Mr. Steve Clark: Since that report, in leading up to your attending committee today and your application for this position, have you had any discussion with anyone in the Premier's office or the Minister of Energy or the Attorney General's office leading up to this appointment?

Mr. Jonathan Batty: No, I have not.

Mr. Steve Clark: So during the process, in terms of how you dealt with offices, were you involved in those seven interviews that led to the report? There were seven people who were interviewed in that—

Ms. Daiene Vernile: Point of order, Chair: What does this have to do with the fact that Mr. Batty is applying for this position—

The Chair (Mrs. Cristina Martins): Mr. Clark, I'd just ask that you continue to ask questions that pertain to the particular appointment of Mr. Batty to this tribunal.

Mr. Steve Clark: Okay. I'll go back to item 7 of your application, "Additional information." Quite often, you provide operational advice to Elections Ontario because of your senior role?

Mr. Jonathan Batty: Yes. As you know, elections are governed by the Election Finances Act and the Election Act in Ontario. Sometimes we have to consider other statutes in the work of Elections Ontario. As the primary legal counsel to the Chief Electoral Officer, I'm often asked questions for our agency about how the law applies to us and how we must translate legal requirements into operational requirements, for example.

Mr. Steve Clark: So in terms of determining how statutory rules apply, enforcing rules, explaining to the public, the media and the stakeholders, you've had a pretty big role and you've been basically, as you acknowledge today, the author of the report, albeit tabled under the Chief Electoral Officer. You were involved as the spokesperson for the privacy breach that took place a number of years ago, and you've represented the agency at committee when the Chief Electoral Officer hasn't been there. So suffice it to say that in the last five years, you've been basically the second in command at Elections Ontario.

Would you say that was a fair estimate? I know you're very modest, but would you say that's a fair statement?

Mr. Jonathan Batty: I'm certainly cognizant that I've played a major role at Elections Ontario, and as the general counsel to Elections Ontario, I have been centrally involved in its work. We function as a team at Elections Ontario, and I do have to explain that I've been the head of compliance. I think it's difficult to say I've been number two in respect of operational matters at Elections Ontario, because at the beginning of my tenure there was a Ms. Wells, who was the Deputy Chief Electoral Officer for Ontario, who was a key adviser—

Mr. Steve Clark: I just think some people will think it's unusual that the author of the Sudbury report is now getting an appointment by the government.

The Chair (Mrs. Cristina Martins): We have about 10 seconds left.

Mr. Steve Clark: I just think some people would think it would be unusual that you'd be sitting here for a pretty high-profile appointment after being involved in the—

The Chair (Mrs. Cristina Martins): Thank you, Mr. Clark. We are now going to turn it over to Mr. Gates.

Mr. Wayne Gates: Good morning, sir. How are you?

Mr. Jonathan Batty: I'm well, thank you, Mr. Gates.

Mr. Wayne Gates: That's good. I don't want you to feel special—I ask this question of everybody. Have you ever donated to the Liberal Party?

Mr. Jonathan Batty: In the last decade, when I've been at Elections Ontario, I have absolutely not donated to any political party in Ontario. In my time in the federal and provincial service, I don't think I ever contributed to a political party or the Liberal Party. In the late 1980s or early 1990s, I may have made a contribution to the federal or provincial Liberal Party, but I can't remember the specifics.

Mr. Wayne Gates: Well, it's always important to have a good memory when you're a lawyer, seeing as you do a lot of cases.

Just to follow up on what my colleague said—I'm not going to get into the Sudbury stuff; I think he covered it—do you have any experience in running nomination meetings? We seem to have some problems with that in the province of Ontario.

Mr. Jonathan Batty: No, I do not.

Mr. James J. Bradley: Good question.

Mr. Wayne Gates: I thought it was all right. It brought a smile to Clarky. But that's not why I asked it, Clarky. Sorry, buddy.

The reason why I asked that is because I had a nomination meeting. I'm going to be the candidate again in Niagara Falls, and I'm very proud of that. I had a nomination meeting, and it ended up having an article in the Toronto Star, I believe it was, on violating the new election rules. It turned out that my staff had called a number of people to make sure that we did everything by the book. I just wondered if my staff had ever talked to them from Niagara Falls, if you had ever talked to them.

Mr. Jonathan Batty: I know we take a number of inquiries with respect to nomination contests. The regulation that is involved in nomination contests under the Election Finances Act isn't about the voting processes in those nomination contests; it's about reporting on the financial activities in support of a campaign. Those rules are new in Ontario, and I know our office has provided lots of information to parties, candidates and constituency associations about those new rules. I have a staff of 16, and my compliance officers, for instance, spend a lot of time advising chief financial officers about the existing rules and the new rules. I'm not, off the top of my head—

Mr. Wayne Gates: A yes or no would have been just as good an answer.

Mr. Jonathan Batty: I'm sorry, Mr. Gates; I don't know if your staff phoned our offices.

Mr. Wayne Gates: Listen, I don't know what part of your team—the A team, the B team or the C team—I just wanted to say that they gave us great information, so everything we did was proper. Take it back and let them know that I say thank you, that they didn't get me in any trouble. That's good, so take it back and say thanks to them.

Mr. Jonathan Batty: I will, sir.

Mr. Wayne Gates: The next question I want to get to—I want to get into this stuff as well. You talked about self-representation when they go to appeals. You're a lawyer. How hard is it for somebody who has to self-represent themselves to win an appeal, in your honest opinion? Because a lot of people can't afford lawyers. With no disrespect to lawyers, some people just can't afford them, so they do it themselves. It's no different than the OMB or any of those things. It's a lot tougher to win the appeals. Would you agree with that? Or would you say, "Well, you know what? No, I think you can self-represent yourself and be successful."

Mr. Jonathan Batty: I think that people who represent themselves before tribunals do have challenges. One of the things that I can see over the course of my career, for example, is that—when I started practice, those indi-

viduals weren't referred to as self-represented individuals, they were referred to as unrepresented individuals.

One of my early experiences at the bar was working with a legal aid clinic. In representing people at that stage, one of the things I encountered in practice was that my clients were oftentimes petrified about going before a board or a tribunal. As a lawyer representing them, one of the first things I had to do was to allay their fears and explain the process to them. The reason I've spent time on that—because it's a really important question—is that in dealing with people who are self-represented, they don't have that benefit. One of the things that I'm really cognizant about in becoming an adjudicator—and I will hearken back to my experience many years ago—is that the people who are coming forward are oftentimes very scared and very intimidated by the process, and sometimes a board process, because of the composition of applicants and respondents, can seem very adversarial. I think it's an honest fear that people feel they're going to be beat up when they come before a tribunal. That's just not the case before tribunals. I know that's just not the case before tribunals. But as a lawyer, I had to really allay the fears of my clients.

0930

As an adjudicator and as an associate chair, one of the things that I think is very important is to create an atmosphere which is accessible, which is welcoming, which gets to the heart of the matter, and which yields a fair resolution for the parties.

Mr. Wayne Gates: I'm going to ask you a question here, and then I'm going to ask you another one, if I get time.

How much time have I got?

The Chair (Mrs. Cristina Martins): You have just under three minutes.

Mr. Wayne Gates: It's my understanding that the OSPCA had some concerns previously with the scope of cases that the Animal Care Review Board was hearing at the time. I believe it was in 2013. The OSPCA claimed that the Animal Care Review Board was hearing cases that involved constitutional matters.

Can you comment on what you believe is an appropriate scope for the Animal Care Review Board? And I would like to get on the record, so make sure you give me at least a minute to do a follow-up question on that.

Mr. Jonathan Batty: Certainly. I'm not currently a member of the tribunal, and I'm not really in a position where, right now, I can give you an informed assessment in response to your question. I don't want to elaborate further, because I want to make sure to give you time for your follow-up question.

Mr. Wayne Gates: As my colleague Mr. Bradley would know, we had a very bad situation in Niagara with Dr. Rekhi, a veterinarian who was abusing animals. It was caught on video. The employees were so sickened by it that they videoed it secretly. It couldn't get out into the public quick enough. He ended up getting a six-month suspension, but he's able to practise again.

I think these types of things have to be looked at a little better, around legislation. So I just wanted to say

that. It was a terrible situation. The community came together. I look at animals, quite frankly, like kids. I always tell the story that I thought my dad loved his pet poodle more than he loved me. That's kind of the way we are with our pets. We love our pets. When we put the trust into a veterinarian to take care of our pets and bring them back to good health, and they abuse them, I'm not so sure that vet should have the opportunity to practise again. I just wanted to say that, so maybe you'll look into that particular case.

I've got to get this other question out, because it is important that you talk about it.

I appreciate your experience. Have you had any opportunity in going through this—have you looked at the performance measures and targets, in particular with being a lawyer who has written awards? The Animal Care Review Board is meeting their targets only 80% of the time; the Fire Safety Commission, 80% of the time; the Licence Appeal Tribunal, 80% of the time; and the Ontario Civilian Police Commission, 80% of the time. Are you aware that that is kind of where they're at? I know it sounds like a high number, but there are some that are meeting them 100% of the time.

I think we should be given those decisions within the time limits. Some of the decisions are 30 days, which is a little tougher—I get that—but some are 60 days as well. As a lawyer, maybe you can elaborate on how—

The Chair (Mrs. Cristina Martins): Thank you very much, Mr. Gates. That concludes the time for your questioning.

Thank you very much, Mr. Batty. You may step down.

We will now consider the concurrence for Jonathan Batty, who is nominated as member and associate chair, Licence Appeal Tribunal (Safety, Licensing Appeals and Standards Tribunals Ontario); member, Animal Care Review Board (Safety, Licensing Appeals and Standards Tribunals Ontario); member, Fire Safety Commission (Safety, Licensing Appeals and Standards Tribunals Ontario); member, Ontario Civilian Police Commission (Safety, Licensing Appeals and Standards Tribunals Ontario); and member, Ontario Parole Board (Safety, Licensing Appeals and Standards Tribunals Ontario).

Would someone please move the concurrence? Mr. Qaadri, please.

Mr. Shafiq Qaadri: I move concurrence in the intended appointment of Jonathan Batty, nominated as member and associate chair of the Licence Appeal Tribunal, SLASTO, the Safety, Licensing Appeals and Standards Tribunals Ontario; and member of the Animal Care Review Board, SLASTO; the Fire Safety Commission, SLASTO; the Ontario Civilian Police Commission, SLASTO; and the Ontario Parole Board, SLASTO.

The Chair (Mrs. Cristina Martins): Any discussion?

All in favour? Unanimous. The motion is carried. Thank you very much.

Congratulations, Mr. Batty.

We will reconvene on October 17. The committee is adjourned.

The committee adjourned at 0935.





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STANDING COMMITTEE ON GOVERNMENT AGENCIES

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